

Appendix A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
DIVISION

Mike A. Lewis

versus

University of  
Houston  
Downtown

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§

CIVIL ACTION NO. \_\_\_\_\_

EMPLOYMENT DISCRIMINATION COMPLAINT

1. This action is brought under Title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is conferred by Title 42 United States Code, Section § 2000e-5.

2. The Plaintiff is:

Address:

County of Residence:

3. The defendant is:

Address:

Mike A. Lewis  
1630 Antoine Drive  
Houston, Texas 77054  
Harris

University of Houston  
Downtown

One Main Street Houston Texas 77002

☐ Check here if there are additional defendants. List them on a separate sheet of paper with their complete addresses.

4. The plaintiff has attached to this complaint a copy of the charges filed on 8-31-11 with the Equal Opportunity Commission.

5. On the date of 5-16-12, the plaintiff received a Notice of Right to Sue letter issued by the Equal Employment Opportunity Commission; a copy is attached.

6. Because of the plaintiff's:

- (a) ☐ race
- (b) ☐ color
- (c) ☐ sex
- (d) ☐ religion
- (e) ☐ national origin,

the defendant has:

- (a) ☐ failed to employ the plaintiff
- (b) ☐ terminated the plaintiff's employment
- (c) ☐ failed to promote the plaintiff

(d) ☒ other: been discriminated against based on  
both my age 49 at the time and my  
impairment back injury

7. When and how the defendant has discriminated against the plaintiff:

for the past two years, but most recently in MAY 2011  
I have been forced to endure comments about both my  
age and my impairment back injury from Albert Holden  
ITV Manager and Lloyd Matzner Director of Mult. Media and ITV

8. The plaintiff requests that the defendant be ordered:

- (a) ☐ to stop discriminating against the plaintiff
- (b) ☐ to employ the plaintiff
- (c) ☐ to re-employ the plaintiff
- (d) ☐ to promote the plaintiff

ON August 31, 2011. I WAS  
laid off from my position  
of 15 1/2 years.

- (e) ☒ to A loss of wages, benefits and retirement  
\$ 34,560 a year of \$ 69,120 for  
two years of lost wages, benefits and retirement and that;
- (f) ☒ the Court grant other relief, including injunctions, damages, costs and attorney's fees.

Mike A. Lewis

(Signature of Plaintiff)

Address: 1630 ANTOINE DRIVE  
HOUSTON, TEXAS 77055

Telephone: 713-320-1956

To Whom it May Concern:

The Plaintiff Mike A. Lewis wish to file a Civil Lawsuit with The United States District Court Southern District of Texas in Houston, Texas on Age and Disability Discrimination based on or about March 11, 1996. I began working as a Video Engineer for the University of Houston-Downtown. For the past ten years I was able to perform the duties of my position with assistance in moving heavy equipment and items due to my medical impairment which the university system was aware of. For the past two years, but most recently in May 2011. I have been forced to endure comments about both of my age and impairment from Albert Holden, ITV Manager, and Lloyd Matzner, Director of Multimedia and ITV. On or about August 31, 2011. I was laid off from my position.

I was advised by Albert Holden on June 30, 2011, I was going To be laid off. I was advised that my layoff was a result of budget cuts. Prior to being laided off. I was asked to provide the organization with an update on my limitations related to my impairment, limitations which had not changed in ten years.

I believe I have been discriminated against on both of my age 49 at the time, and my impairment in violation of the Age Discrimination in Employment Act and the American with Disabilities Act of 1990, as amended. The EEOC has granted my the Right to Sue UH Downtown based on these charges, I am filing this petition for a Civil Lawsuit with the United States District Southern District of Texas Civil Courts. After this Suit is filed I would like UH Downtown to be notified. I will provide the address On the next page.

Yours,

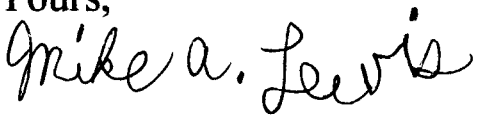
*Mike A. Lewis*

University of Houston Downtown  
One Main Street  
Houston, Texas  
77002  
(713)221-8017

To Whom it May Concern:

I filed my case in the time limit with the Texas Civil Courts of Harris County. I was informed that I should move my case into The United States Southern District Civil Courts due to the Eleventh Amendment Immunity to the United States Constitution Bars state-court suits for damages against the State for Violation of Federal Law. I will be providing you with the paper work from the Harris County State Civil Courts stating this matter. I would like to have this case filed with the United States Southern District Civil Courts so I can have a fair and speedy trial on this matter. What I would like to achieve from this lawsuit is to recover a year or two of salary, benefits and retirement lost because of my age 49 at that time and my impairment in the Violation of the Age Discrimination in Employment Act and the American Disabilities Act of 1990, as amended. My salary for a year including benefits and retirement was \$ 34,560 a year. For two years it would be \$ 69,120. I would like for the Court to grant relief, including injunctions, damages, costs and attorney's fees concerning this matter.

Yours,

A handwritten signature in black ink that reads "Mike A. Lewis". The signature is written in a cursive, flowing style with a large, prominent "M" and "L".

Mike A. Lewis



**U.S. Equal Employment Opportunity Commission  
Houston District Office**

1201 Louisiana Street, 6th Floor  
Houston, TX 77002  
(713) 651-4900  
(713) 651-4901 TTY  
(713) 651-4902 FAX

**JUN 27 2012**

Mike Lewis  
1630 Antoine  
Houston, TX 77055

Re: FOIA No.: 4602012163137 / 460-2012-00108; A12-8-FOIA-393-HU Mike Lewis v University of Houston Downtown

Dear Mr. Lewis:

Your Freedom of Information Act (FOIA) request, received in this office on June 11, 2012 has been processed. Our search began on June 11, 2012. All agency records in creation as of June 11, 2012 are within the scope of the EEOC's search for responsive records. The paragraph(s) checked below apply:

- ☐ A portion of your request is neither granted nor denied because: ☐ Your request does not reasonably describe the records you wish disclosed or ☐ No records fitting the description of the records you seek disclosed exist or could be located after a thorough search. The remainder of your request is:
  - ☐ Granted
  - ☐ Denied pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
  - ☐ Granted in part and denied in part. Portions not released are being withheld pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- ☐ Your request is granted.
- ☐ Your request is denied pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- ☒ Your request is granted in part and denied in part. Portions not released are being withheld pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- ☐ You must send a check for \$[ ] made payable to the United States Treasurer by mail to the above address. Manual search and review time is billed per quarter hour based on the personnel category of the person conducting the search. Fees for search services range from \$5.00 per quarter hour to \$20.00 per quarter hour. Direct costs are billed for computer searches and in certain other circumstances. Photocopying is billed at \$.15 per page. 29 C.F.R. §1610.15. The attached Comments page will further explain any direct costs assessed. The fee has been computed as follows:
  - ☐ Commercial use requests: [ ] pages of photocopying; [ ] quarter hour(s) of [ ] review time; and [ ] quarter hour(s) of [ ] search time; Direct costs are billed in the amount of [ ] for [ ].
  - ☐ Requests by educational or noncommercial scientific institutions or representatives of the news media: [ ] pages of photocopying. The first 100 pages are provided free of charge.

Re: FOIA No.: 4602012163137 / 460-2012-00108; A12-8-FOIA-393-HU Mike Lewis v University of Houston Downtown

- ☐ All other requests: ☐ 169 pages of photocopying and ☐ quarter hour(s) of ☐ search time. Direct costs are billed in the amount of ☐ for ☐. The first 100 pages and 2 hours of search time are provided free of charge.
- ☒ The disclosed records are in the enclosed CD. At your request, a Certification of Authentication of Documents is attached. Your payment for this service has been received.
- ☐ The disclosed records are enclosed. Photocopying and search fees have been-waived pursuant to 29 C.F.R. § 1610.14.
- ☒ You may appeal this decision by writing within thirty days of receipt of this letter to the Office of Legal Counsel, FOIA Programs, Equal Employment Opportunity Commission, 131 M Street, N.E., Suite 5NW02E, Washington, D.C. 20507. Your appeal will be governed by 29 C.F.R. § 1610.11.
- ☒ See attached Comments page for further information.

Sincerely,



R.J. Ruff Jr  
District Director

Applicable Sections of the Freedom of Information Act, 5 U.S.C. § 552(b):

- |  |   |
|--|---|
| <input type="checkbox"/> (2)   | <input type="checkbox"/> (6)                  |
| <input type="checkbox"/> (3) (A)(i)  | <input type="checkbox"/> (7)(A)               |
| <input type="checkbox"/> Section 706(b) of Title VII                                     | <input type="checkbox"/> (7)(B)               |
| <input type="checkbox"/> Section 709(e) of Title VII                                     | <input type="checkbox"/> (7)(C)               |
| <input type="checkbox"/> Section 107 of the ADA  | <input type="checkbox"/> (7)(D)               |
|  | <input type="checkbox"/> Other (see attached) |
| <input type="checkbox"/> (3)(A)(ii)  |   |
| <input type="checkbox"/> 41 U.S.C. §253b(m) of the<br>National Defense Authorization Act |   |
| <input type="checkbox"/> (4)   |   |
| <input checked="" type="checkbox"/> (5)  |   |

Re: FOIA No.: 4602012163137 / 460-2012-00108; A12-8-FOIA-393-HU Mike Lewis v University of Houston Downtown

The fifth exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(5) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, permits withholding documents that reflect the analyses and recommendations of EEOC personnel generated for the purpose of advising the agency of possible action. This exemption protects the agency's deliberative process, and allows nondisclosure of "inter-agency or intra-agency memorandums or letters which would not be available to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). The exemption covers internal communications that are deliberative in nature. *National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); *Hinckley v. United States*, 140 F.3d 277 (D.C. Cir. 1998); *Mace v. EEOC*, 37 F.Supp.2d 1144 (E.D. Mo. 1999). The purpose of the deliberative process privilege is to "allow agencies freely to explore alternative avenues of action and to engage in internal debates without fear of public scrutiny." *Missouri ex. rel. Shorr v. United States Corps of Eng'rs.*, 147 F.3d 708, 710 (8th Cir. 1998).

Records may be withheld under this exemption if they were prepared prior to an agency's decision, *Wolfe v. Department of Health and Human Services*, 839 F.2d 768, 775, 776 (D.C. Cir. 1988) (en banc) and for the purpose of assisting the agency decision maker. *First Eastern Corp. v. Mainwaring*, 21 F.3d 465,468 (D.C. Cir. 1994). See also, *Greyson v. McKenna & Cuneo and EEOC*, 879 F. Supp. 1065, 1068, 1069 (D. Colo. 1995). Records may also be withheld to the extent they reflect "selective facts" compiled by the agency to assist in the decision making process. *A. Michael's Piano, Inc. v. Federal Trade Commission*, 18 F.3d 138 (2d Cir. 1994). An agency may also withhold records to the extent that they contain factual information already obtained by a requester through prior disclosure. See *Mapother, Nevas, et al. v. Dept of Justice*, 3 F.3d 1533 (D.C. Cir. 1993).

#### DOCUMENTS WITHHELD PURSUANT TO THE FIFTH EXEMPTION TO THE FOIA:

Case Log, 2 pages

Priority Charge Handling Procedures Form, undated, 1 page

Case Assessment, dated 10/18/2011, 2 pages

Pre-Determination Interview Notes, dated 5/9/2012, 1 page

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Mike A. Lewis  
1630 Antoine Drive  
Houston, TX 77055

From: Houston District Office  
Total Plaza  
1201 Louisiana, Suite 600  
Houston, TX 77002

☐ On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

460-2012-00108

Samantha Salazar,  
Investigator

(713) 651-4965

(See also the additional information enclosed with this form.)

## NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- ☒ More than 180 days have passed since the filing of this charge.
- ☐ Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- ☒ The EEOC is terminating its processing of this charge.
- ☐ The EEOC will continue to process this charge.

**Age Discrimination in Employment Act (ADEA):** You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

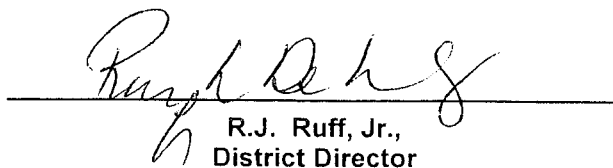
- ☒ The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.
- ☐ The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

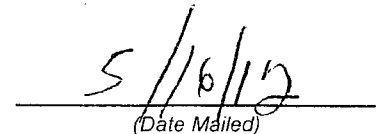
**Equal Pay Act (EPA):** You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosures(s)

  
R.J. Ruff, Jr.,  
District Director

  
(Date Mailed)

cc: Joseph Y. Ahmad  
Attorney at Law  
AHMAD ZAVITSANOS ANAIPAKOS  
ALAVI MENSING  
1221 McKinney, Ste. 3460  
Houston, TX 77010

Jennifer E. Bloom  
Senior Assistant General Counsel  
UNIVERSITY OF HOUSTON SYSTEM  
311 E. CULLEN BUILDING  
Houston, TX 77204

TWC – Civil Rights Division  
101 East 15<sup>th</sup> St., Room 144T  
Austin, TX 78778

## CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge, referred to: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

460-2012-00108

## Texas Workforce Commission Civil Rights Division

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Mike A. Lewis

Home Phone (Incl. Area Code)

(713) 681-6739

Date of Birth

01-18-1962

Street Address

City, State and ZIP Code

1630 Antoine Drive, Houston, TX 77055

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

UNIVERSITY OF HOUSTON

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(713) 221-8000

Street Address

City, State and ZIP Code

One Main Street, Houston, TX 77055

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☐ RETALIATION ☒ AGE ☒ DISABILITY ☐ GENETIC INFORMATION  
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE  
 Earliest Latest

08-31-2011

08-31-2011

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

- I. On or about March 11, 1996, I began working as a Video Engineer for University of Houston-Downtown. For the past ten years I was able to perform the duties of my position with assistance in moving heavy equipment and items due to my medical impairment which the university system was aware of. For the past two years, but most recently in May 2011, I have been forced to endure comments about both my age and my impairment from Albert Holden, ITV Manager, and Lloyd Matzner, Director of Multimedia and ITV. On or about August 31, 2011, I was laid off from my position.
- II. I was advised by Albert Holden on June 30, 2011, that I was going to be laid off. I was advised that my lay off was the result of budget cuts. Prior to being laid off, I was asked to provide the organization with an update on my limitations related to my impairment, limitations which had not changed in ten years.
- III. I believe I have been discriminated against based on both my age, 49, and my impairment in violation of the Age Discrimination in Employment Act and the Americans with Disabilities Act of 1990, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

Maria Esther Guerra

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

(month, day, year)

October 13, 2011

MARIA ESTHER GUERRA  
 MY COMMISSION EXPIRES  
 April 5, 2015

Oct 18, 2011

Date

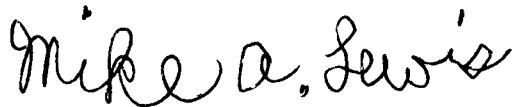
Charging Party Signature

Mike A. Lewis

To Whom It May Concern:

I am Informing the United States District Court of the Southern District of Texas. That I have witnesses that are still employed by the University of Houston Downtown. That Witnessed Age and Disability Comments made by Lloyd Matzner Director of Multimedia and ITV at the University of Houston Downtown And Albert Holden ITV Manager University of Houston Downtown. The witnesses are Mr. Steven Cachia, Oscar Dela Cruz and Nik Bhatt. They witnessed these comments in May and June of 2011. They are all still Managers at the University of Houston Downtown.

Yours,

A handwritten signature in cursive script that reads "Mike A. Lewis". The signature is written in black ink and is positioned below the "Yours," text.

Mike A. Lewis



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2012

***Via U.S. First Class Mail  
and CMRRR #7012 1010 0002 0825 8102***

Mike A. Lewis  
1630 Antoine Drive  
Houston, Texas 77055

**Re: *Mike A. Lewis v. University of Houston-Downtown; In the 157<sup>th</sup> Judicial  
District of Harris County; Cause No. 2012-48070***

Dear Mr. Lewis

Enclosed for your records, please find a copy of *Defendant's Plea to the Jurisdiction and Original Answer* and *Notice of Hearing*, which I am filing with the court today.

Sincerely,

**SUSAN M. WATSON**  
Assistant Attorney General  
General Litigation Division  
(512) 463-2120  
(512) 320-0667 Facsimile

Enclosure

**NO. 2012-48070**

**MIKE A. LEWIS,**

***Plaintiff,***

**v.**

**UNIVERSITY OF HOUSTON-  
DOWNTOWN**

***Defendant.***

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**IN THE DISTRICT COURT**

**157<sup>TH</sup> JUDICIAL DISTRICT**

**OF HARRIS COUNTY, TEXAS**

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**NOTICE OF HEARING**

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PLEASE TAKE NOTICE that Defendant University of Houston-Downtown's Plea to the Jurisdiction will be submitted to the court for consideration on **Friday, October 19, 2012 at 9:00 a.m.** The hearing will take place at the Harris County Courthouse, 201 Caroline, Houston, Texas 77002.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

DAVID C. MATTAX  
Director of Defense Litigation

JAMES "BEAU" ECCLES  
Chief, General Litigation Division

/s/ Susan M. Watson  
**SUSAN M. WATSON**  
Texas Bar No. 24061066  
Assistant Attorney General

General Litigation Division  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2120 (Telephone)  
(512) 320-0667 (Facsimile)

*ATTORNEYS FOR DEFENDANT*

**CERTIFICATE OF SERVICE**

I certify a true and correct copy of the foregoing document has been sent by *First Class Mail and Certified Mail, Return Receipt Requested* on September 13th, 2012, to the following:

Mike A. Lewis  
1630 Antoine Drive  
Houston, Texas 77055

*PLAINTIFF, PRO SE*

/s/ Susan M. Watson  
**SUSAN M. WATSON**  
Assistant Attorney General

NO. 2012-48070

MIKE A. LEWIS,

*Plaintiff,*

v.

UNIVERSITY OF HOUSTON-  
DOWNTOWN

*Defendant.*

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IN THE DISTRICT COURT

157<sup>TH</sup> JUDICIAL DISTRICT

OF HARRIS COUNTY, TEXAS

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**ORDER ON DEFENDANT'S PLEA TO THE JURISDICTION**

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On this day, the Court considered Defendant University of Houston-Downtown's ("UHD") Plea to the Jurisdiction. After due consideration, this Court is of the opinion that Defendant's plea is meritorious.

IT IS THEREFORE ORDERED that Defendant's Plea to the Jurisdiction is GRANTED and that Plaintiff's claims against UHD are DISMISSED WITH PREJUDICE.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
HONORABLE JUDGE PRESIDING

**NO. 2012-48070**

**MIKE A. LEWIS,**

***Plaintiff,***

**v.**

**UNIVERSITY OF HOUSTON-  
DOWNTOWN**

***Defendant.***

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**IN THE DISTRICT COURT**

**157<sup>TH</sup> JUDICIAL DISTRICT**

**OF HARRIS COUNTY, TEXAS**

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**DEFENDANT'S PLEA TO THE JURISDICTION AND ORIGINAL ANSWER**

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TO THE HONORABLE JUDGE WILSON:

Defendant the University of Houston-Downtown (hereinafter "UHD") files this Plea to the Jurisdiction and Original Answer and in support thereof would respectfully show as follows:

**I.  
INTRODUCTION**

On or about, August 21, 2012, Plaintiff Mike A. Lewis ("Plaintiff") filed this suit against the University alleging discrimination in violation of (1) the Age Discrimination in Employment Act (ADEA), and (2) the Americans with Disabilities Act of 1990 (ADA). UHD respectfully requests that Plaintiff's lawsuit be dismissed as UHD has Eleventh Amendment immunity to these claims, depriving this Court of subject matter jurisdiction.

**II.  
PLEA TO THE JURISDICTION**

**A. The Legal Standard**

A plea to the jurisdiction challenges the court's authority to determine the subject matter of the controversy. *Axtell v. Univ. of Texas*, 69 S.W.3d 261, 263 (Tex. App.—Austin 2002, no pet.). Subject matter jurisdiction cannot be presumed and cannot be waived. *Continental Coffee*

*Prods. v. Cazarez*, 937 S.W.2d 444, 449 n.2 (Tex. 1996). When reviewing a plea to the jurisdiction, a court should limit itself to the jurisdictional issue and avoid considering the merits of the claims. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 552 (Tex. 2000). The plaintiff bears the burden of alleging facts affirmatively showing that the trial court has subject-matter jurisdiction. *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993); *Texas Dep't of Crim. Justice v. Miller*, 48 S.W.3d 201, 203 (Tex. App.–Houston [1st Dist.]1999), *rev'd on other grounds*, 51 S.W.3d 583, 589 (Tex. 2001)).

#### **B. Plaintiff's Claims Are Barred by Eleventh Amendment Immunity**

The Eleventh Amendment to the United States Constitution bars state-court suits for damages against the State for violation of federal law. *Alden v. Maine*, 527 U.S. 706, 712 (1999) (holding that Congress cannot require a state court to adjudicate federal law claims that could not be brought against a state in federal court); *Hoff v. Nueces County*, 153 S.W.3d 45, 48 (Tex. 2004) (noting it is well-settled that “Eleventh Amendment immunity protects non-consenting states from being sued in their own courts for federal law claims.”). The Texas Supreme Court has also recognized that its courts are bound to follow federal interpretations of Eleventh Amendment immunity. *Hoff* at 49. Moreover, the jurisdictional bar of Eleventh Amendment immunity “applies regardless of the nature of the relief sought.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *Okpalobi v. Foster*, 190 F.3d 337, 343 (5th Cir. 1999) (The Eleventh Amendment bars suits brought directly against state, absent the state’s consent, irrespective of nature of relief sought).

State universities such as UHD are considered state agencies protected by sovereign immunity.<sup>1</sup> See *Lowe v. Texas Tech Univ.* 540 S.W.2d 297, 298 (Tex. 1976). Under the Eleventh Amendment, state agencies are entitled to sovereign immunity in their own courts unless Congress validly abrogates, or the state waives, this immunity. See *Univ. of Tex. at El Paso v. Herrera*, 322 S.W.3d 192, 195 (Tex. 2010); *Tex. Dep't of Transp. v. Esters*, 343 S.W.3d 226, 232 (Tex. App.—Houston [14th Dist.] 2011, no pet.). It is the burden of the plaintiff to affirmatively demonstrate the court's jurisdiction to hear the lawsuit under a statute that waives sovereign immunity. *Texas Dept. of Criminal Justice v. Miller*, 51 S.W.3d 583, 587 (Tex. 2001). Because Lewis does not—and cannot—identify a waiver for his claims under the ADEA or ADA, his suit should be dismissed.

### **1. Plaintiff's ADEA Claim is Barred by Eleventh Amendment Immunity**

This Court is without jurisdiction over Plaintiff's age discrimination claim under the ADEA. The ADEA does not abrogate a state's sovereign immunity. See e.g., *Kimmel v. Florida Board of Regents*, 528 U.S. 62, 82-84 (2000) (holding that although the ADEA does contain a clear statement of Congress' intent to abrogate the States' immunity, that abrogation exceeded Congress' authority under § 5 of the Fourteenth Amendment). Accordingly, Plaintiff's ADEA claim must be dismissed for lack of jurisdiction.

### **2. Plaintiff's ADA Claim is Barred by Eleventh Amendment Immunity**

When Congress enacted the ADA, it expressly authorized private individuals to bring suit to recover money damages against state entities for violations of the Act. See 42 U.S. C. § 12202 (“A State shall not be immune under the eleventh amendment to the Constitution of the United

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<sup>1</sup> Sovereign immunity under the Eleventh Amendment refers to immunity from federal claims. See *Alden v. Maine*, 527 U.S. 706, 754 (1999); *Sherwinski v. Peterson*, 98 F.3d 849 (5th Cir.1996).

States from an action in a Federal or State court of competent jurisdiction for a violation of this chapter.”). However, the Supreme Court later held that Congress did not *validly* abrogate a State’s sovereign immunity from suit when enacting the ADA. *See Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 360 (2001) (“We hold that [suits by state employees to recover money damages by reason of the State’s failure to comply with Title I of the ADA] are barred by the Eleventh Amendment.”). Therefore, suits brought solely under Title I of the ADA continue to be barred by sovereign immunity. Consequently, Plaintiff’s employment discrimination claim under federal law is barred by sovereign immunity.

Though Plaintiff’s petition sparsely lays out his cause of action under the ADA and does not specify that he is suing under Title I, based on his pleadings and claims asserting an employment relationship with UHD, it is reasonably presumed that his claims are brought pursuant to Title I of the ADA. In analyzing the ADA, which prohibits employment discrimination against individuals with disabilities, the Supreme Court determined that the Eleventh Amendment bars private actions against the State for violations of Title I of the ADA. *See Garrett*, 531 U.S. at 360. Accordingly, Plaintiff’s claims of disability discrimination under the ADA are barred by Eleventh Amendment immunity and this Court should dismiss this suit in its entirety.

### **III. ORIGINAL ANSWER**

Without waiving the foregoing, Defendant generally denies each and every allegation in Plaintiff’s Original Petition and demands strict proof thereof.

**IV.  
CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Defendant University of Houston-Downtown prays that this Court dismiss Plaintiff's ADEA and ADA claims against Defendant with prejudice.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify a true and correct copy of the foregoing document has been sent by *First Class Mail* and *Certified Mail, Return Receipt Requested* on September 13th, 2012, to the following:

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